LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
SEP 21 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1961

No. 452

VITO F. LANZA and CHARLES F. RANK,
Petitioners,

against

ROBERT F. WAGNER as Mayor of the City of New York and LOUIS J. LEFKOWITZ, Attorney General of the State of New York,
Respondents.

JURISDICTIONAL STATEMENT

VITO F. LANZA,
Attorney for Petitioners,
32 Court Street,
Brooklyn 1, New York.

SAMUEL SHAPIRO,
of Counsel

SUBJECT INDEX

	PAGE
Appeals to this court	1
Opinions in Courts below	3
Grounds on which jurisdiction is invoked	4
Judgments and orders to be reviewed	4
Statute conferring jurisdiction on this court	5
State Statute claimed to violate Constitution of the United States	6
Questions presented by appeal	6
Substantial Federal questions raised by appeals	6
Facts material to consideration of questions	7
Argument	9
Previous proceedings	13
Prayer	13

CITATIONS OF LAW

New York State Statute, Chapter 971, Laws of 1961	6
Baker v. Carr, 82 U.S. 7 L.ed. 2d 663	9
Cummings v. Missouri, 4 Wall. 277	9
Detroit United Ry. v. Michigan, 242 U.S. 238	12
Long v. City of New York, 81 N.Y. 425	12
People ex rel. Devery v. Koler, 173 N.Y. 103	12
Poindexter v. Greenhow, 114 U.S. 270	12
United States v. Lovett, 328 U.S. 303	9
Wilko v. Swan, 346 U.S. 427	5
Wipfler v. Klebes, 284 N.Y. 248	12
Yick Wo v. Hopkins, 118 U.S. 356	12

APPENDICES

	PAGE
I — Original notice of appeal	14
II — Supplemental notice of appeal	16
III — Judgment of October 11, 1961	19
IV — Judgment of January 4, 1962	20
V — Order of Court of Appeals of May 17, 1962	21
VI — Judgment of August 23, 1962	25
VII — First opinion of Special Term	[13]*
VIII — Second opinion of Special Term	[15]*
IX — Memorandum of Appellate Division	[21]*
X — Prevailing opinion of Court of Appeals	[22]*
XI — One of dissenting opinions in Court of Appeals	[38]*
XII — The other dissenting opinion in Court of Appeals	[45]*
XIII — State Statute violating Constitution of United States	[48]*

* Figures in brackets refer to the page numbers in the Petition for Certiorari in this Court.

IN THE

Supreme Court of the United States

October Term, 1961

No. .....

VITO F. LANZA and CHARLES F. RANK,
Petitioners,

against

ROBERT F. WAGNER as Mayor of the City of New York and LOUIS J. LEFKOWITZ, Attorney-General of the State of New York,
Respondents.

JURISDICTIONAL STATEMENT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The jurisdictional statement filed on behalf of petitioners, respectfully shows:

Appeals to This Court

1. Petitioners have appealed to this court from the judgments entered in the office of the Supreme Court of the State of New York in and for the County of Kings, on October 11, 1961, January 4, 1962 and August 23, 1962 and from the order of the Court of Appeals of the State of New York

entered in the office of the Clerk of that court on May 17, 1962.

Respondents had delayed filing of the remittitur, and entry of final judgment as directed by the Court of Appeals. Petitioners, to preserve their right to appeal to this court filed their original notice of appeal before respondents filed the remittitur and the final judgment, and petitioners filed their supplemental notice of appeal after the filing of the remittitur and the entry of final judgment.

The notices of appeal were filed in the office of the Clerk of said Supreme Court. The original notice of appeal was filed on August 10, 1962. The supplemental notice of appeal was filed on August 28, 1962. Said notices of appeal are respectively Appendix I and Appendix II hereto.

2. The original notice of appeal is from the following:

(A) The final judgment of such Supreme Court entered on October 11, 1961, which dismissed the petitioners' complaint. Said judgment is Appendix III hereto.

(B) The final judgment of such Supreme Court entered on January 4, 1962, which after appeal to the Appellate Division of such court, affirmed the dismissal of the petitioners' complaint. Said judgment is Appendix IV hereto.

(C) The order of the Court of Appeals of the State of New York entered in said court on May 17, 1962, which by a divided [4 to 3] court modified both said judgments to the extent of directing judgment in favor of respondents declaring that the New York State Statute, which was the subject of the action in which said judgments and order were entered, is constitutional and adjudging that it was proper for the respondent Mayor of the City of New York to appoint new members to the Board of Education, in accordance

with the provisions of said Statute. Said order is Appendix V hereto.

3. The supplemental notice of appeal is from the final judgment of such Supreme Court entered on August 23rd 1962, which after appeal to said Court of Appeals modified both said judgments to the extent of directing judgment in favor of respondents declaring that the New York State Statute, which was the subject of the action in which said judgments and order were entered, is constitutional and adjudging that it was proper for the respondent Mayor of the City of New York to appoint new members to the Board of Education, in accordance with the provisions of said Statute. Said judgment is Appendix VI hereto.

Opinions in Courts Below

4. The opinions of Special Term of the Supreme Court were respectively handed down on September 19, 1961 and September 25, 1961. The first opinion is not reported. The second opinion is reported at 30 Misc. 2d 212, 220 N.Y.S. 2d 477. The memorandum decision of the Appellate Division was handed down on December 21, 1961 and is reported at 15 A.D. 2d 552, 222 N.Y.S. 2d 1019. The opinions of the Court of Appeals, one opinion for the majority of the court, and two opinions for the minority of the court, were handed down on May 17, 1962 and are reported at 11 N.Y. 2d 317, 183 N.E. 2d 670 and is set forth as Appendix IV pp. 22-47 in the Petition for Certiorari. Docket #334.

The first opinion of Special Term is Appendix I in the Petition for Certiorari at page 13.

The second opinion of Special Term is Appendix II in the Petition for Certiorari at page 15.

The memorandum decision of the Appellate Division is Appendix III in the Petition for Certiorari at page 21.

The prevailing opinion of the Court of Appeals is Appendix IV in the Petition for Certiorari at page 22.

One of the dissenting opinions in the Court of Appeals is Appendix IV in the Petition for Certiorari at page 38.

The other dissenting opinion in the Court of Appeals is Appendix IV in the Petition for Certiorari at page 45.

Grounds on Which Jurisdiction of This Court is Invoked

5. A concise statement of the grounds on which the jurisdiction of this court is invoked, follows.

(A) Petitioners were members of the New York City Board of Education. They were legislated out of office by a statute of the State of New York, being Chapter 971 of the Laws of 1961, effective August 21, 1961, which is Appendix V in the Petition for Certiorari at page 48. Said statute is hereafter referred to as the New York State Statute. Petitioners were so legislated out of office, although their respective terms were to continue for some time.

(B) Petitioners instituted the action in the Supreme Court of the State of New York, for a judgment to declare said Statute to be unconstitutional and void, and to restrain the respondents from proceeding under said Statute. The action was brought pursuant to the New York State Civil Practice Act, §§ 473; 876.

Judgments and Orders Sought to be Reviewed

6. The judgments and orders which are the subject of the appeals to this court, and which are sought to be reviewed, are as follows:

The judgment of said Supreme Court dated and entered on October 11, 1961, which is Appendix III.

The judgment of said Supreme Court dated and entered on January 4, 1962, which is Appendix IV.

The order of the Court of Appeals of the State of New York dated and entered on May 17, 1962, which is Appendix V.

The judgment of said Supreme Court dated and entered on August 23, 1962, which is Appendix VI.

7. There were no requests for rehearing. The notices of appeal were filed in the Supreme Court of the State of New York, respectively on August 10, 1962 and on August 28, 1962. Such notices of appeal are referred to in paragraph 1 hereof.

Statutory Provision Conferring Jurisdiction on This Court

8. The statutory provision believed to confer on this court jurisdiction of the appeal is U.S. Code, Title 28, § 1257, which insofar as here material, provides:

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court, as follows:

(1) • • •

(2) by appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The case believed to sustain the jurisdiction of this court is, Wilko v. Swan, 346 U.S. 427.

State Statute Claimed to be Violative of Constitution of the United States

9. The Statute of the State of New York, which is here involved is Chapter 971 of the Laws of New York, 1961, effective on August 21, 1961, which is Appendix V, page 48 in the Petition for Certiorari.

Questions Presented by Appeals

10. The questions presented by the appeals taken to this court, may be tersely stated as follows:

(A) Whether said New York State Statute violates Article 1, §10 of the Constitution of the United States, insofar as said Article provides that no State shall pass any Bill of Attainder.

(B) Whether said New York State Statute violates Article 4, of the Constitution of the United States, insofar as said Article provides that the United States shall guarantee to every State a Republican Form of Government.

(C) Whether said New York State Statute violates Amendment XIV, §1, of the Constitution of the United States, insofar as said Amendment provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

Substantial Federal Questions Raised by Appeals

11. The Federal questions which are raised by the appeal, are substantial and of major constitutional importance, arising under the provisions of the Constitution of the United States, as follows: Article 1, §10; Article 4, §4; and Amendment XIV, §1.

12. Each and all of the questions which are presented by these appeals were raised by argument and briefs, in the Supreme Court, in the Appellate Division of the Supreme Court and in the Court of Appeals of the State of New York. The opinions and decisions of these courts, clearly show that these questions were timely and properly raised.

13. Each and all of the questions which are presented by these appeals, were in the courts below determined adversely to petitioners. In the Court of Appeals, the determination was by a 4 to 3 decision.

Facts Material to Consideration of Questions Presented

14. A concise statement of the case containing the facts material to the consideration of the questions presented, follows:

(A) Petitioners were members of the New York City Board of Education. They were legislated out of office by the New York State Statute, altho their respective terms were to continue for some time. The New York City newspapers, had during the period in question, carried daily accounts of events leading to the enactment of this Statute. Request is made for submitting these excerpts from the press, with this statement, as these excerpts were before the Court of Appeal of the State of New York.

(B) Petitioner Lanza had been appointed for a seven year term beginning May 1948 and reappointed to a seven year term beginning May 1955. Petitioner Rank had been appointed for a seven year term beginning May 1950 and reappointed to a seven year term beginning May 1957.

(C) The New York State Education Law § 306 and the New York City Charter § 523, provided for removal

of a member of the Board of Education on charges of misconduct, on notice and hearing.

(D) The New York City newspapers, during the period in question, treated with the hotly contested mayoralty campaign, and "schools" became a political issue. It was urged that there was laxity, irregularity, incompetence and corruption in the administration of the school system.

It is conceded that as to both petitioners, there never was any semblance of suggestion of misconduct and that no charges were ever made against either of them.

(E) In this setting, the New York State Statute was enacted. Insofar as here material, this Statute provided that the terms of office of the members of the Board were forthwith terminated, and for appointment of new members of the Board of Education, by the Mayor, but *only* from a list of nominees to be submitted to him by a Selection Board of 11 private persons holding named positions in named private organizations.

The Board of Education was continued as theretofore, with precisely the same duties, the same terms of office, the same number of members, and the same name. The only difference was that the Mayor instead of having an unlimited choice of appointment, was now required to appoint the members from the list to be submitted to him by the Selection Board of 11 private persons.

(F) In accordance with the New York State Statute, the Selection Board submitted to the Mayor a list of 26 nominees. It is conceded that none of the Members of the Board as constituted immediately before the enactment of this Statute, was considered by the Selection Board for nomination.

(G) On September 18, 1961 the Mayor appointed 9 of the nominees of the Selection Board to make up the

Board of Education, and these appointees took their respective oaths of office.

ARGUMENT

15. The Legislature of the State of New York is required to be as responsive to the Constitution of the United States, as are ordinary citizens. *Baker* v. *Carr*, 82 U.S. 7 L. ed. 2d 663, where it is said,

> "The whole thrust of today's legal climate is to end unconstitutional discrimination. It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired. Legislators have no immunity from the Constitution. The Legislatures of our land should be made as responsive to the Constitution of the United States as are citizens who elect the legislators."

As to Bill of Attainder

16. The New York State Statute inflicted punishment on petitioners, without a hearing, and therefore the Statute is void as being in violation of Article 1, §10 of the Constitution of the United States.

A Bill of Attainder is a legislative act which inflicts punishment without a trial. *Cummings* v. *Missouri*, 4 Wall. 277, 323. A statute, irrespective of its form, which applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a trial, is a Bill of Attainder. It is not requisite for a Bill of Attainder to pronounce a person guilty of a crime or to impose punishment in the form of a fine or imprisonment. *United States* v. *Lovett*, 328 U.S. 303, 315.

The plain meaning of the New York State Statute is that petitioners were guilty of being lax in their duties and caus-

ing or permitting critical conditions to exist. Petitioners could have been removed, on charges of misconduct, if there were such misconduct, after notice and hearing. Yet, no charges were ever preferred against petitioners. Instead, the Statute found petitioners guilty of serious charges without trial and removed them from office on the basis of such finding of guilt, without hearing of any kind.

The Statute was clearly a Bill of Attainder, and thus violative of Article 1, §10 of the Constitution of the United States.

As to Republican Form of Government

17. The New York State Statute is a delegation of legislative power to private persons holding named positions in named private organizations, and therefore the Statute is void as being in violation of Article 4, §4 of the Constitution of the United States.

The Constitution of the United States guarantees to each State a Republican Form of Government. In essence, in a Republic, every holder of public office must derive directly or indirectly from the people. The New York State Statute, delegates the power to appoint members of the Board of Education, who are public officers, to private persons holding named positions in private organizations.

Diligent research has not revealed a case of the United States Supreme Court, which is in point.

In the Court of Appeals of the State of New York, the majority opinion concedes that there is a diversity of opinion in State courts as to the validity of Statutes, such as the New York State Statute here involved. This opinion in part states,

> "There has been some diversity of opinion in other jurisdictions as to whether the Legislature may confer on private persons or organizations the actual power of appointing public officers, as distinguished from merely authorizing them to make nominations."

It would appear that the majority opinion, as to this phase of the case is rested on the contention that the Legislature, when delegating power to appoint (1) has not surrendered any of its legislative functions; and (2) is merely providing a method where there is more probability of securing qualified persons for public office.

In Government, power is allocated as between the Executive, the Legislature and the Judiciary. The line of demarcation is often difficult to determine. Be that as it may, if it be assumed, that the legislative function of appointment of public officers, is more in the nature of an Executive function rather than a Legislative function, still the Legislature is without right to delegate that function to private organizations or private persons who do not derive from the people, for in essence in a Republic the appointment of every public officer must derive directly or indirectly from the people.

In the Court of Appeals of the State of New York, one of the minority opinions, as to this phase of the case is rested on contention that there is a probability of undermining Constitutions of a free people, by appointment to public office thru the appointment procedure provided for by the Statute. This opinion in part states,

> "I apprehend no good reason for encouraging such a practice for it is by such means that Constitutions adopted by a free people are gradually undermined and finally over thrown."

In view of the thorough discussion in the majority opinion and in the minority opinions of the Court of Appeals of the State of New York, as to this phase of the case, there would seem to be no need for further discussion. Suffice it to say, that the Statute clearly provides for appointment of public officers, by private persons, who do not directly or indirectly derive from the people, and therefor the Statute is void as being in violation of Article 4, §4 of the Constitution of the United States.

As to Due Process and Equal Protection of the Laws

18. The New York State Statute denies to petitioners due process and the equal protection of the laws and therefore the Statute is void as being in violation of Amendment XIV, §1 of the Constitution of the United States.

It is conceded that there never was the slightest semblance of any suggestion that either petitioner was concerned with any misconduct, that the Statute under which they were appointed to public office, fixed the terms of office, and provided that they could be removed from such office only for misconduct, on notice and hearing.

Yet the New York State Statute operates to remove each petitioner from his office, without claim of misconduct and without notice or hearing. Certainly, it is a denial of due process, for the Legislature to oust petitioners who were lawfully appointed to their offices by purporting to abolish the offices, and at the same time naming other persons to such offices. *Matter of Wipfler* v. *Klebes*, 284 N.Y. 248; *Long* v. *City of New York*, 81 N.Y. 425; *People ex rel. Devery* v. *Coler*, 173 N.Y. 103, 113.

It is conceded that the Selection Board did not consider either petitioner as a nominee, for submission to the Mayor. It is settled that there is a violation of the constitutional guaranty of equal protection of the laws, by an unequal and discriminatory administration of a Statute which appears to be fair and legal on its face. *Poindexter* v. *Greenhow*, 114 U.S. 270, 295, 296; *Yick Wo* v. *Hopkins*, 118 U.S. 356, 373, 374; *Detroit United Ry.* v. *Michigan*, 242 U.S. 238, 247.

The New York State Statute clearly deprived petitioners of their right to due process and of their right to equal protection of the laws, and therefore the Statute is void as being in violation of Amendment XIV, §1 of the Constitution of the United States.

Previous Proceedings

19. Because the respondents had failed to file the remittitur with the Clerk of the Supreme Court, altho the remittitur had been sent to the Corporation Counsel of the City of New York on May 23, 1962, petitioners to preserve their rights for review by this court, on August 14, 1962 filed a petition for a Writ of Certiorari praying that a Writ of Certiorari issue out of this court, to either or both of the Supreme Court of the State of New York and the Court of Appeals of the State of New York, to review the judgments and orders referred to in this statement. Said petition is pending before this court, under Docket No. 334.

Prayer

20. Petitioners therefore pray that this court accept jurisdiction of the appeals and permit the filing of briefs on the merits and oral argument, for resolution of the questions raised by the appeals.

Respectfully submitted,

VITO F. LANZA,
Attorney for Petitioners,
32 Court Street,
Brooklyn 1, New York.

SAMUEL SHAPIRO,
of Counsel.

Certificate of Service

I certify that the respondents Robert F. Wagner as Mayor of the City of New York and Louis J. Lefkowitz, Attorney General of the State of New York, have been properly served, in accordance with Rule 33 of the United States Supreme Court, with a copy of the foregoing Jurisdictional Statement. I execute this certificate as a member of the Bar of the United States Supreme Court.

New York City, N. Y. this September 20, 1962.

VITO F. LANZA

APPENDIX I

Notice of Appeal to the Supreme Court of the United States

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

File 13538/1961

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE of the following:

I. Notice is hereby given that Vito F. Lanza and Charles F. Rank, the appellants above named, hereby appeal to the Supreme Court of the United States from each and all of the following:

(A) The final judgment of the Supreme Court of the State of New York in and for Kings County, entered on October 11, 1961 which dismissed the complaint in this action;

(B) The final judgment of the Supreme Court of the State of New York in and for Kings County, which after appeal to the Appellate Division of said court, affirmed the dismissal of the complaint in this action; and

(C) The order of the Court of Appeals of the State of New York entered in said court on May 17, 1962, which by a divided court modified both said judgments, to the extent of directing judgment in favor of defendants declaring that Chapter 971 of the Laws of 1961 [herein called the "New York State Statute"] is constitutional and adjudging that it was proper for the defendant Mayor of the City of New York to appoint new members to the Board of Education in accordance with the provisions of said statute.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all the papers which are part of the Remittitur returned by the Clerk of the Court of Appeals of the State of New York to the Clerk of the County of Kings, State of New York.

III. The following questions are presented by this appeal.

(A) Whether said New York State Statute violates Art. 1. §10 of the Constitution of the United States, insofar as said Article provides that no State shall pass any bill of Attainder.

(B) Whether said New York State Statute violates §4 of the Constitution of the United States, insofar as said section provides that the United States shall guarantee to every State in this Union a Republican Form of Government.

(C) Whether said New York State Statute violates Amendment XIV §1, of the Constitution of the United States, insofar as said amendment provides that no State shall deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

Dated: New York City
August 9th 1962.

VITO F. LANZA,
Attorney for Plaintiffs-Appellants,
32 Court Street,
Brooklyn 1, New York.

APPENDIX II

Supplemental Notice of Appeal to the Supreme Court of the United States

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

File 13538/1961

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the notice of appeal to the Supreme Court of the United States, dated August 9, 1962 and filed herein on August 10th, 1962, is supplemented to read as follows:

I. Notice is hereby given that Vito F. Lanza and Charles F. Rank, the appellants above named, hereby appeal to the Supreme Court of the United States from each and all of the following:

(A) The final judgment of the Supreme Court of the State of New York in and for Kings County, entered on October 11, 1961 which dismissed the complaint in this action;

(B) The final judgment of the Supreme Court of the State of New York in and for Kings County, entered January 4th, 1962, which after appeal to the Appellate Division of said Court, affirmed the dismissal of the complaint in this action; and

(C) The order of the Court of Appeals of the State of New York entered in said court on May 17, 1962, which by a divided court modified both said judgments, to the extent of directing judgment in favor of defendants declaring that

Chapter 971 of the Laws of 1961 (herein called the "New York State Statute") is constitutional and adjudging that it was proper for the defendant Mayor of the City of New York to appoint new members to the Board of Education in accordance with the provisions of said statute, and the final order directing judgment, including the judgment of the Supreme Court of the State of New York in and for the County of Kings, both entered on August 23rd, 1962, which after appeal to said Court of Appeals adjudicated that said New York State Statute is constitutional and that it was proper for the defendant Mayor of the City of New York to appoint new members to the Board of Education in accordance with the provisions of said Statute, and this appeal also seeks to review the form and content thereof directed over the objections of the plaintiffs-appellants.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all the papers which are part of the Remittitur returned by the Clerk of the Court of Appeals of the State of New York to the Clerk of the County of Kings, State of New York.

III. The following questions are presented by this appeal:

(A) Whether said final judgments and said New York State Statute violate Art. 1 § 10 of the Constitution of the United States, insofar as said Article provides that no State shall pass any bill of Attainder.

(B) Whether said final judgments and said New York State Statute violate § 4 of the Constitution of the United States, insofar as said section provides that the United States shall guarantee to every State in this Union a Republican Form of Government.

(C) Whether said final judgments and said New York State Statute violate Amendment XIV § 1, of the Constitution of the United States, insofar as said amendment provides that no State shall deprive any person of life, liberty or property within its jurisdiction the equal protection of the law.

Dated: New York City
August 25th, 1962

VITO F. LANZA,
Attorney for Plaintiffs-Appellants.,
32 Court Street,
Brooklyn 1, New York.

APPENDIX III

Judgment of Dismissal

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF KINGS

[SAME TITLE]

The plaintiffs having moved for an order restraining the Mayor of the City of New York, from nominating and appointing new members of the Board of Education in the place and stead of plaintiffs until the trial and final determination of the action; and the defendants having cross-moved on oral argument for a dismissal of the complaint, and an order having been duly entered in the office of the Clerk of the County of Kings on the second day of October, 1961, granting the cross-motion and dismissing the complaint.

Now on motion of LEO A. LARKIN, Corporation Counsel, attorney for the defendant, Robert F. Wagner, and a motion of Louis J. Lefkowitz, Attorney General, of the State of New York, pro se, it is

ADJUDGED that the complaint be and the same hereby is dismissed.

Dated: October 11, 1961.

JOSEPH B. WHITTY
Clerk

APPENDIX IV

Judgment of Affirmance

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

[SAME TITLE]

The plaintiffs-appellants having appealed to the Appellate Division of the Supreme Court, Second Department, from the judgment entered herein in the Office of the Clerk of the Supreme Court, County of Kings, on or about the 11th day of October, 1961, dismissing the complaint herein, and the appeal having been duly argued in the Appellate Division and that Court in an order entered in the Office of the Clerk of said Appellate Division on the 20th day of December, 1961, having ordered and adjudged that the judgment of the Supreme Court so appealed from be unanimously affirmed without costs, (and a certified copy of said Appellate Division order having been duly filed in the Office of the Clerk of the County of Kings, on or about the 27 day of December, 1961),

Now, on motion of Leo A. Larkin, Corporation Counsel, attorney for the defendant-respondent, Robert F. Wagner, as Mayor of the City of New York, and Louis J. Lefkowitz, attorney for defendant-respondent, Louis J. Lefkowitz, as Attorney General of the State of New York, it is

ADJUDGED, that the judgment so appealed from be and the same hereby is affirmed, without costs.

Dated: Jan. 4, 1962.
at 9:39 AM

JOSEPH B. WHITTY
Clerk

APPENDIX V

Order and Remittitur of Court of Appeals

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 17th day of May in the year of our Lord one thousand nine hundred and sixty-two, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, Presiding

RAYMOND J. CANNON, *Clerk.*

REMITTITUR—May 17, 1962.

[SAME TITLE]

BE IT REMEMBERED, That on the 18th day of January in the year of our Lord one thousand nine hundred and sixty-two, Vito F. Lanza & ano., the appellants in this cause, came here unto the Court of Appeals, by Vito F. Lanza, attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Robert F. Wagner, as Mayor of the City of New York, & ano., &c., the respondents in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, & ano., attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Samuel Shapiro, of counsel for

the appellants, and by Mr. Sidney P. Nadel, of counsel for the respondent Mayor, and submitted by the respondent Attorney General, and after due deliberation had thereon, did order and adjudge that the judgement of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is modified, without costs, in accordance with the opinion herein.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considers that the said judgment be modified, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

At a Special Term Part I of the Supreme Court held in and for the County of Kings at the County Courthouse in said County, Civic Center, Brooklyn, New York on the 23rd day of August, 1962.

PRESENT:

HON. A. LAWRENCE ACQUAVELLA,

Justice.

VITO F. LANZA and CHARLES F. RANK,

Plaintiffs-Appellants,

against

ROBERT F. WAGNER as Mayor of the City of New York, and LOUIS J. LEFKOWITZ, Attorney General of the State of New York,

Defendants-Respondents.

The defendant respondent, Robert F. Wagner, as Mayor of the City of New York, having moved for an order directing the Clerk of this Court to enter a judgment modifying the judgment of the Appellate Division of the Supreme Court, Second Department, entered herein in the Office of the Clerk of the County of Kings on or about the 4th day of January, 1962, and the motion having duly come on to be heard before me,

Now upon reading and filing the notice of motion dated the 2nd day of August, 1962, the affidavit of John L. Radlein sworn to July 31, 1962 together with the proposed judgment annexed thereto, the remittiture of the Court of Appeals, dated May 17, 1962, and the affidavit of Vito F. Lanza, sworn to August 16, 1962, and after hearing LEO A. LARKIN, Corporation Counsel attorney for said defendant

respondent (John L. Radlein, Esq. of Counsel) in support of the motion, and Vito F. Lanza Esq. attorney for plaintiffs appellants appearing and due deliberation having been had, it is

ORDERED that the said motion be and the same hereby is granted and it is further

ORDERED that the order and judgment of the Court of Appeals be and the same hereby is made the order of this Court and it is further

ORDERED that the Clerk of the County of Kings be and he hereby is directed to enter a judgment modifying the judgment entered on or about the 4th day of January, 1962 to the extent of directing judgment in favor of the defendants (1) directing that Chapter 971 of the Laws of 1961 is constitutional and (2) adjudging that it was proper for the defendant, the Mayor of the City of New York to appoint new members to the Board of Education in accordance with the provisions of the Statute, and deleting from the judgment entered October 11, 1961 the adjudication dismissing the complaint herein and it is further,

ORDERED that it appearing to the Court that the proposed judgment annexed to the moving papers herein complies with the foregoing provisions of this order, the Clerk of the County of Kings is directed to enter said judgment and it is further

ORDERED that said determination and modification are without costs.

Enter,

A.L.A.
J.S.C.

APPENDIX VI

Final Judgment Entered August 23, 1962.

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

[SAME TITLE]

The plaintiffs-appellants having appealed to the Court of Appeals from the judgment of the Appellate Division of the Supreme Court, Second Department, entered in the office of the Clerk of the County of Kings on or about the 4th day of January, 1962, which judgment unanimously affirmed the judgment entered in the office of the Clerk of the County of Kings on or about the 11th day of October, 1961, dismissing the complaint herein; and the appeal having been duly argued at the Court of Appeals, and that Court in an order dated the 17th day of May, 1962 having ordered and adjudged that the judgment of the Appellate Division of the Supreme Court so appealed from be modified without costs in accordance with the opinion of said Court, and having further ordered that the records and proceedings in that Court be remitted to the Supreme Court there to be proceeded upon according to law, and an order having been duly entered in the office of the Clerk of the County of Kings on the 23rd day of August, 1962, making the order and judgment of the Court of Appeals the order of the Supreme Court, and having further ordered that the Clerk of the County of Kings be directed to enter a judgment modifying the judgment appealed from the extent of directing judgment in favor of the defendants (1) directing that Chapter 971 of the Laws of 1961 is constitutional and (2) adjudging that it was proper for the defendant, the Mayor of the City

of New York, to appoint new members to the Board of Education in accordance with the provisions of the statute,

Now, on motion of Leo A. Larkin, Corporation Counsel, attorney for the defendant-respondent Robert F. Wagner, as Mayor of the City of New York, it is

ADJUDGED that the judgment entered herein in the office of the Clerk of the County of Kings on or about the 11th day of October, 1961, be and the same hereby is modified without costs by deleting the adjudication dismissing the complaint herein, and it is further

ADJUDGED AND DECLARED that Chapter 971 of the Laws of 1961 is constitutional, and it is further

ADJUDGED AND DECLARED that it was proper for Robert F. Wagner, as Mayor of the City of New York to appoint new members to the Board of Education of the City of New York in accordance with the provisions of Chapter 971 of the Laws of 1961.

Dated: New York, N. Y., August 23, 1962.

JOSEPH B. WHITTY
Clerk.

Filed

1962 Aug. 23 AM 11:28
Kings County Clerk's Office